



Afghanistan Watch
دیده بان افغانستان

The First Experience

Voting Patterns and Political Alignments in Wolesi Jirga (2005-2010)

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1. Foreword

Parliament is the most important legislative institution in the contemporary world. The idea of a parliament is founded on principle of rule of law. If the rule of law is not upheld the parliament will remain a symbolic, ceremonial institution and at the most have a consultative function. Societies that are in transition from an autocratic rule to the democracies require legislative bodies.

The law must originate from the will of the people. Imposing personal will as well as perceptions of particular groups as law, is one of the challenges ahead of the legislative bodies in societies where the conflict between the will of the people and the will of the powerful groups, has not ended in favor of popular interests. As a consequence legislations are usually influenced by the cultures and beliefs of the societies in which they are adopted and in many cases, these cultures and social beliefs stand as obstacles to the formation and consolidation of democracy and limit personal liberties.

The contemporary Afghanistan is gradually transitioning. The concept of rule of law is

yet to be consolidated and particular powerful groups are actively influencing the legislative process. This paper examines Afghanistan's parliament as a modern legislative body. It attempts to answer these critical questions: what are the challenges that lie ahead of the legislative body in contemporary Afghanistan? How are its internal political alignments structured? What are the backgrounds to these political alignments and how best they can be understood? What are the voting patterns that have given shape to this legislative institution? Finally, What are the main lessons learnt for future of the country?

This study analyzes the first post-Taliban Wolesi Jirga which is at its final days of legislative period, and attempts to identify lessons from the first post-Taliban national assembly that can be applied to the next period. Undoubtedly, it does not contain the whole picture of the Wolesi Jirga, but is a step forward in presenting insights on the Wolesi Jirga and explaining its performance with a particular focus on the "voting patterns and political alignments" in the parliament.

2. Research Methodology

The research conducted for this study was mainly qualitative. To understand the political dynamism and alignments within the parliament we have relied on two key sources: in-depth interviews with members of the parliament as well as observers and analysts and officials documents released by the Secretariat of the National Assembly. This paper explores which factors have shaped the internal political configurations of the parliament and to what extent they have influenced the legislation process. More specifically it looks at “language”, “ethnicity”, “ideology” and “power” as the main variables that have affected the legislative process. These variables establish the principal criteria for the formation of inter-parliamentary political groupings.

Answering these questions in an environment that is characterized by pervasive suspicions and misunderstanding is not an easy job. To do this this paper looks in greater detail on four controversial laws passed in this legislative period: “National Reconciliation Charter”, the “Electoral Law”, the “Higher Education Law” and the “Mass Media Law”. Analysis of these four laws, which stimulated the broadest political debates and arguments within legislature sheds light on the cleavages and the political groupings.

3. Scope of the Research

Afghanistan’s Parliament is bi-cameral legislature and includes:

1. Wolesi Jirga (The Lower House)
2. Meshrano Jirga (The Upper House)

According to article 92 of the Afghanistan’s constitution, “Law is what both houses approve and the President promulgates”¹. It means that both chambers of the parliament have an interdependent and inseparable role in legislature. However, the range of this research is confined to the Wolesi Jirga. With regard to time, this report covers the whole legislative period of the first post-Taliban Wolesi Jirga. The report is to be released at time when the country is on the eve of the second parliamentary elections due to be held on 18 September 2010.

4. Background of the Legislative Institutions of Afghanistan

It appears that the Loya Jirgas are the first legislative institutions in Afghanistan. The first Loya Jirga (Assembly of the Elders) was held in 1747 to endorse Ahmad Shah Abdali as a king. However, the concept of rule of law did not lie behind the convening of the Loya Jirgas. Therefore, it is right to make this judgment that “Based on the real power the Amir wielded, during the years between 1747 – 1923, the power of the monarchy was more or less absolute and unlimited². The departure point towards the rule of law in Afghanistan is the 1923 constitution, which was influenced by the then constitutional thoughts. Amanullah Khan “following the western models, struggled to provide that state with a legal founda-

1. The Constitution of the Islamic Republic of Afghanistan, Chapter 5, Article 92

2. Afghanistan’s Constitutional Rights (1st Vol. Structure and the Principles of the State), Ramin Mushtaki, translated by Hossein Gholami, p. 36, 2008

tion, which was unknown until then in Afghanistan and unfamiliar for his predecessors, and to shape the constitutional concept of rule of law”³. However, as the 1923 constitution suffered from the main deficit of a lack of separation of powers, it could not result into formation of a meaningful parliament in the modern sense of word. In 1929, with the fall of the reformist King in the wake of social unrests, the constitution of the reformation era was repealed and in 1931 and his successor the Nadir Shah announced a new Constitution, which was a step backward in many respects.

Mr. Partaw Nadery says, “As he came to power in 1929, Nadir Khan called his government “a constitutional monarchy”. But Nadir Khan’s claim had no concordant to the structure of his state. His government was not a constitutional monarchy but a despotic family monarchy with absolute dominion. He divided all powers only among his brothers, family members and adherents, giving them extensive authority. Thus, he brought about a dynastic and ethnic state in Afghanistan. In fact, the rulers belonging to the tribal state were beyond any law; in other word, their will was the law imposed on the people.”⁴

In the second volume of ‘Afghanistan in the Course of History’, Mir Ghulam Mohammad Ghobar writes, “301 representatives attended in the Nadir Khan’s Loya Jirga or Grand Assembly, of whom 209 were the officials and military officers be-

longing to the government. Nadir Khan’s main goals in the Jirga was to, in one hand, annul the credibility of the resolutions of the Amanullah Khan’s Loya Jirga, held on 1928 in Paghman, and on the other hand, to gain approval of the Jirga for his monarchy, giving legitimacy to his power.”⁵

Ghobar adds that “In contrary to all parliamentary principles, Nadir Khan himself appointed the chairman of the parliament. The appointed chief was Wardak representative Abdul Ahad Mayar. Kandahar representative Bari Abdul Aziz Khan made a speech against the appointed speaker Abdul Ahad Mahyar, arguing that the appointment of the parliament speaker was the right of the MPs, not of the government. Because of that, the dignified man was held 13 years in prison.”⁶

The 1964 Constitution resulted in the proposal of the idea of the separation of powers and consequently, swept the ground for the birth of parliament as a modern legislative body. Since then, several constitutions emerged in Afghanistan’s history such as the 1977 constitution of the Republic of Doud Khan, the 1981 constitution of the People’s Democratic Party of Afghanistan and the 1992 constitution of the Mujahedin. It was only the 1964 constitution that served as foundation for Afghanistan’s current constitution.

Therefore, the background of a parliamentary system and the struggles to establish the rule of law date back to the 1964 constitution, and the decade, known as the “decade of democracy” in which this con-

3. Ibid, p. 38

4. Nadery, Background of the Parliaments in Afghanistan- Kabul net http://www.kabulnath.de/Salae_Charom/Shoumare_74/Ustad-PartauNaderi-2.html

5. Ibid

6. Ibid

stitution was implemented. In this decade, Afghanistan experienced several cycles of parliaments with structures which somehow resemble that of today. The constitution of 1964 envisioned a parliament with two chambers: Wolesi Jirga and Mishrano Jirga. According to the constitution, all members of the Wolesi Jirga were to be elected for four years through direct, free and confidential votes of the people. Thus, the election was administered through non-transferable voting system. The candidates had to be at least 25 years old. Two thirds of the Mishrano Jirga representatives were appointed by the King from the prominent religious and influential figures in the country. The other one third of the Mishrano Jirga MPs came from the provincial councils. These exact terms with the same conditions are stipulated in the current constitution. A number of laws were passed in this period, which illustrates a kind of transition from the Sharia system of law to a secular system of law. Though there is long way still to go in the transition its beginning date back to not a far time ago. Afghanistan’s current parliament is largely molded on the model of the parliament of the Decade of Democracy(1342 – 1352).

5. The Current Parliament

According to the current constitution of Afghanistan, two third of the Mishrano Jirga representatives are selected from the members of the provincial⁷ and district coun-

7. Though the share of the district councils in the Upper House is envisaged in the constitution, but the election for the district and municipality councils have not held yet. Therefore, the representative of the district councils also comes from the provincial councils to the Mishrano Jirga -Upper House of the parliament.

cils, and another third⁸ is appointed by the president. But all members of the Wolesi Jirga are elected directly by the people of Afghanistan. In terms of authority of the parliament, Afghanistan’s constitution in its 7th chapter defines the position of Afghanistan’s parliament in the new political system as the “highest legislative organ” and the “manifestation of the will of Afghanistan’s people”.⁹ The parliament is entitled to interpolate members of the government, confirm or reject the ministers, endorse the budget, legislate anew and amend the laws, and confirm or reject the ratification of international treaties by Afghanistan.

However, currently, does Afghanistan’s current parliament operate in accordance with this legal context? To understand Afghanistan’s parliament, it does not suffice to refer only to its legal context defined in the Afghanistan’s constitution. It is also quite important to look at its social origin and how it has evolved.

It is a fact that Afghanistan’s parliament as a legislative system has performed some considerable legislative measures which at least in quantity can not be ignored. (See table No. 1) As Nasrullah Stanikzay, Kabul University lecturer on law and political science says “Regarding to approving the laws, the measures of the Wolesi Jirga

Table1:Number of Legislations Passed by the Parliament

International Documents	25
Initiated by Members	4
Legislative Decrees	30
Laws	56
Total Legislations Passed	115

Source: Database of the Department of Research Services of Wolesi Jirga

8. The Constitution of Islamic Republic of Afghanistan, Article 84.

9. The Constitution of Islamic Republic of Afghanistan, Chapter 7, Article 81.

were a significant achievement in institutionalizing the democracy and rule of law in the country.”¹⁰ Even in comparison with the parliaments of many other countries in the world, the overall 115 legal documents approved by the Wolesi Jirga is a considerable achievement. (See Table No. 1). The parliament, however, is subjected to criticism with regard to its role in the interpellation of the cabinet ministers, giving confidence votes to the ministers and approving the budget the parliament of Afghanistan. A member of the Wolesi Jirga Kabir Ranjbar believes that “approving the incapable cabinet nominees and failure in interpellation of ministers with weak performance are from the weaknesses of the Wolesi Jirga in supervising the affairs of the executive.”¹¹ The Wolesi dealt with a total of eight cases of giving confidence or no-confidence to the ministers, of which three cases resulted to withdrawing confidence of the Jirga to the ministers. From these three, Dr. Rangeen Dadfar Spenta served as the foreign minister of the government until the president’s tenure ended. (See Tables 2 and 3)

Afghanistan is clearly a multi-ethnic country and this ethnic diversity is manifested in the parliament. This diverse representation makes the current parliament stand out as an exception amongst the previous parliaments in the country. The manifestation of ethnic diversity and gender representation in the current parliament’s structure have, at least on the surface, been tangible . (See Tables No. 4 and 5)

French writer Olivier Roy’s description of

the Afghan society is still applicable: “Afghanistan’s society is a fragmented society defined by different levels of identity ranging from individuals to absolutely separate groups that consists of extended families to

Table2: Number of Impeachments and Questioning of Government Officials

Name	Occupation
Hanif Atmar	Minister of interior affairs
Abdurahim Wardak	Minister of Defense
Amrullah Saleh	Chief of national security
Mohammad Amin Fatemi	Minister of Public health
Mohammad Amin Farhang	Minister of commerce and industries
Dr. Rangin Dadfar Espanta	Minister of Foreign affairs
Mohammad Akbar Akbar	Minister of immigration affairs
Mohammad Amin farhang	Minister of commerce and industries

Source: Interview with Sayed Ibrahim Hejazi, Director of Scientific Research department of Wolesi Jirga

Table3: Ministers that were not Given Votes of Confidence by the Wolesi Jirga

Name	Occupation
Dr. Rangin Dadfar Espanta	Minister of Foreign affairs
Mohammad Akbar Akbar	Minister of immigration affairs
Mohammad Amin farhang	Minister of commerce and industries

Source: Interview with Sayed Ibrahim Hejazi, Director of Scientific Research department of Wolesi Jirga

Table4: Ethnic Composition of the Administrative Board of Wolesi Jirga during the Last 5 Years

Year 2006	Year 2007	Year 2008	Year 2009	Year 2010
Uzbek 1	Uzbek 0	Uzbek 0	Uzbek 0	Uzbek 0
Pashtun 2	Pashtun 2	Pashtun 2	Pashtun 2	Pashtun 2
Tajik 3	Tajik 3	Tajik 3	Tajik 3	Tajik 3
Hazara 0	Hazara 0	Hazara 0	Hazara 0	Hazara 0

Source: Short Biographies of Representatives of Wolesi Jirga, Communication and Information Department of the Secretariat of Wolesi Jirga and interview with MPs

Table5: Ethnic Composition of Heads of Commissions of Wolesi Jirga during the last 5 years

Year 2006	Year 2007	Year 2008	Year 2009	Year 2010
Uzbek 0	Uzbek 1	Uzbek 1	Uzbek 0	Uzbek 0
Pashtun 9	Pashtun 10	Pashtun 10	Pashtun 10	Pashtun 10
Tajik 8	Tajik 4	Tajik 4	Tajik 7	Tajik 6
Hazara 1	Hazara 2	Hazara 2	Hazara 1	Hazara 2
Other 0	Other 1	Other 0	Other 0	Other 0

Source: Short Biographies of Representatives of Wolesi Jirga, Communication and Information Department of the Secretariat of Wolesi Jirga and interview with MPs

10.Interview, Bakhtar Daily - <http://brishna.org/2.245.htm>

11.Interview with Bakhrar Daily - <http://brishna.org/2.245.htm>

ethnic identity”.¹² This multitude of identities has escalated in the new era. From the sociological perspective, the growth of associations, tribal, cultural and even political groupings is directly related to identity seeking in a society. According to official Ministry of Justice (MoJ) figures, over 100 political parties have been registered in the MoJ so far.¹³ Conse-

Apart from its heterogeneous ethnic composition, the parliament (Wolesi Jirga) also suffers from political incoherency. Political incoherency means that the centre and margin of the politics is separated from each other on the basis of political authority rather than political “discourse”. In the realm of discourse, we face neither

Table 6: Parliamentary Groups Formed in the Wolesi Jirga during the Last 5 Years

Name	Date of Establishment	Head	Activity status
Afghanistan	7 April 2009	Mirwais Yasini	Registered, but not active in reality
Isteqlal-e-melli	9 September 2009	Sayed Mustafa Kazimi	Registered, but not active in reality
Nizarate melli	2 September 2009	Engineer Mohammad Assem	Registered, but not active in reality
Taraqi khah	5 September 2009	Mohammad Naeem farahi	Registered, but not active in reality
Khate sevom	.	Shokria Barikzai	Not registered because it has not been able to attract the necessary members but have been active
Rahe naw	.	Not elected	Not registered because it has not been able to attract the necessary members but have been active

Source: <http://www.parliament.af>

quentially, it can be expected that these various layers of identity and the struggles to seek identity are reflected in the parliament. Afghanistan’s parliament includes all ethnic groups of the country. In addition to the four major ethnic groups (Pashtuns, Hazaras, Tajiks and Uzbeks) the rest of the ethnic groups ranging from Baloch to Pashayi, Aimaq, Turkman, Gujar, Barahwi, and Qizilbash, are also represented in the parliament. Generally, the ethnic composition of the parliament is estimated as such: Pashtuns 44% (112), Tajiks 19%, Hazaras 15% (36), (48), Uzbeks 13% (30) and the rest 7% (21).¹⁴ This paper will later analyze the influence of ethnic composition on the legislative process (Analysis of Electoral Law).

centers nor margins. It is either all centre or margin.

The ineffectiveness of the parliamentary groups formed according to the internal regulation of Wolesi Jirga, also stems from the ambiguity of center and margin in political world. (See Table No 6 about parliamentary groups)

However, it is more logical to study and categorize the political groupings on the basis of their political discourse than on the basis of their share of political power.

Therefore, the different parliamentary groupings that have evolved (like 3rd Line and New Way) can hardly reveal the true nature of political alignments inside the parliament. The inter-parliamentary stratifications can best be understood in the light of the configuration of political social forces in the last three decades. Since the 1960s, the constitutional monarchists, left-

12. Olivier Roy, “New Political Elites in Afghanistan” in Afghanistan, War and Politics, Collected by Babak Yazdi, p. 350, 1372

13. Official Parties in Islamic Republic of Afghanistan (Two Volumes)

14. Biographies of Members of Wolesi Jirga, Parliament Publication 1386. The analysis of the statistical data and the determination of the ethnic breakdown has been carried out by the Author.

ists, Islamists (Mujahedin and Taliban), and the intellectuals were all engaged in power politics in one way or the other. It is appropriate to take into account the role and effect of each of these currents in in-

body of the parliament belong to the Jihadist groups, Hizb-e Islami and the Taliban, that are all Islamist movements. (Refer to tables 7 and 8)

Though the Islamists form the absolute

Table7: Political Background of the Administrative Board of Wolesi Jirga during the Last 5

Year 2006		Year 2007		Year 2008		Year 2009		Year 2010	
Jihadist	4	Jihadist	4	Jihadist	5	Jihadist	5	Jihadist	5
Left parties	0	Left parties	0	Left parties	0	Left parties	0	Left parties	0
Taliban / Hizbe Islami	0	Taliban / Hizbe Islami	0	Taliban / Hizbe Islami	0	Taliban / Hizbe Islami	0	Taliban / Hizbe Islami	0
Independent / New Parties	1	Independent / New Parties	0	Independent / New Parties	0	Independent / New Parties	0	Independent / New Parties	0

Source: Short Biographies of Representatives of Wolesi Jirga, Communication and Information Department of the Secretariat of Wolesi Jirga_ Interview with MPs

Table8: Political Background of Heads of Commissions of Wolesi Jirga during the Last 5 Years

Year 2006		Year 2007		Year 2008		Year 2009		Year 2010	
Jihadist	9	Jihadist	10	Jihadist	10	Jihadist	9	Jihadist	9
Left parties	2	Left parties	4	Left parties	3	Left parties	2	Left parties	2
Taliban / Hizbe Islami	6	Taliban / Hizbe Islami	3	Taliban / Hizbe Islami	4	Taliban / Hizbe Islami	6	Taliban / Hizbe Islami	6
Independent / New Parties	1	Independent / New Parties	1	Independent / New Parties	1	Independent / New Parties	1	Independent / New Parties	1

Source: Short Biographies of Representatives of Wolesi Jirga, Communication and Information Department of the Secretariat of Wolesi Jirga_ Interview with MPs

fluencing the legislative process. Therefore, the current parliament of Afghanistan from the perspective of groupings and the political orientations are discussed in two parts: political spectrums and political parties:

6. Political Groupings

A. Political Movements

1. The Islamists

The Islamists currently wield the greatest effect and the largest influence over the legislative process in the Wolesi Jirga of Afghanistan. As we see, most of the chairmanship of the parliamentary commissions and members of the administrative

majority of the representatives of the Wolesi Jirga, they cannot be called a group or a parliamentary block. For instance, the Mujahedin, that constitutes the majority of the Islamists of the Wolesi Jirga, are not of the same mind or a unified political current. They even cannot be in a coherent and coordinated front as a parliamentary coalition. Mr Ikram Andishamand says, “The Mujahedin parties, which were known as the Mujahedin factions did not form as political parties during the era of war against the Soviet Union army and the communist-backed People’s Democratic Party government and failed to transform into political parties in current era. Despite that, many of them are registered as political parties and have acquired official licenses for political activities. Their

shared links are considered to be only the war against the Soviet forces and the government of the People's Democratic Party, which today is a matter of past. Moreover, the Mujahedin factions, even their intellectual members, demonstrate very different and even adverse thoughts, perceptions and approaches in the same political party over variety of the issues, including the religious affairs. This is the reason that the Mujahedin in the parliament are made up of different figures; from intellectual to the virtuous Islamists who are antagonistic to the US; and to moderate Islamists who are reconcilable and tolerant; from the war commanders who know nothing about the parliamentary affairs to those who are involved with drugs trade and trafficking. From extremist, fanatic and Taliban-style representatives, who strongly oppose political and social rights of the women, to modern and democrat ones; from indigents who own no vehicle for commuting to the parliament and no house to reside in Kabul, to the Mujahedin who heads to the parliament accompanied by servants and bodyguards on their luxury vans and who own villas and markets in Kabul; from those narrow-minded who favor ethnicity, tribal and language dominance attitudes to those who possess broad approach beyond ethnic and tribal views.¹⁵

However, it is difficult to talk about Islamist as a parliamentary group in Wolesi Jirga. Because Islamism is not only a specific current but it is also a political spectrum. Traditionally, political Islamism has been locked in two Sunni and Shia branch-

es, influenced respectively by the Islamic Brotherhood in the Arab world and the theory of "Guardianship of Jurisprudent" in Iran. Mir Mohammad Seddqi Farhang writes about the influence of Ikhwanism or Islamic brotherhood: "In Afghanistan, cultural cooperation with Egypt began after Jamal Abdul Naser's trip in 1955. At the same time, a number of graduates from religious schools went to that country for higher education and studied at al-Azhar and other institutions. Some of them accepted the political philosophy of Islamic Brotherhood and took part in some of its active circles. Upon their return to Afghanistan, after 1968, they established similar circles at Kabul University and religious seminaries".¹⁶ Shia Muslim often engaged in politics through the ideology of theocracy (Welayat Fakeh) established by Ayatullah Khomeini in Iran. Olivier Roy in his analysis of the alignments of the political forces among the Hazaras has commented: "In mid 1960s, a new group is established: the educated youth. They are highly pro-politics, progressive and the supporters of Hazara nationalism that are tilted toward Moaism or driven towards supporting Khomeini".¹⁷ It is worth men-

The Secular Islamists can be labeled as liberal-conservatives of Afghanistan as they have adopted Muslim-democratic parties such as Mohatmir Mohammad Party in Malasia, Justice and Development Party in Turkey as their model of behavior instead of inspiration by radicals such as Sayed Qutb, Mawdudi, Abdullah Azzam and Osama Bin Laden.

15. The hidden facts in the race and selection of the speaker of the Wolesi Jirga, 5 Jaddi 1384, Aryaei Website, Mohammad Ikram Andishmand

16. Mir Mohammad Seddqi Farhang, Afghanistan dar panj qarn-e akheer, pp. 3 - 23

17. Oliver Rowa, Islam and Political Modernization, translated by Abul Hasan Sarvi Muqaddam, Mashad, Ostan Quds Razawi, P. 224, 1369.

tioning that not only the Muslim Brotherhood but also “Deobandism” influenced the political Islam of the Sunni sect. During the anti-Soviet war, the works by Abdul A’lla Mawdudi especially his book “Caliphate and kingdom in Islam” along with the works of Sayed Qutb especially “Social Justice in Islam” were widely read. And today, one cannot ignore influence of these groups in Afghanistan’s parliament –though they have somehow changed.

However, now these two classic Islamist trends have undergone deep transformations and twists and turns. Mohammad Jawad Sultani, a University lecturer and a sociologist of contemporary Islamic movements believes that: “The fundamental frameworks of these two Islamist movements have weakened and each of them has given birth to contradictory currents. For example, the original form of the Muslim Brotherhood has faded away and it has given birth to on one hand a new traditional and conservative current that adapts to some extent with the new changes, and on the other hand another fanatical current that reject everything. Shuray-e Nazar can be to some extent be considered a group adjusting to new changes while on contrary, the Taliban negates everything”.¹⁸

Similar transformations have taken place in its Shiite world. Many of the supporters of the Guardianship of Jurisprudent critique their former view. The recent controversy that erupted in the parliament over the “Law on personal affairs of the Shias” revealed disagreements among the Shia Islamists. While Sayed Hossain Alemi Balkhi, a Shia MP in the parliament supported the

more stringent view of Ayatollah Mohseni, the latter said to be closely allied with Iran, Haji Mohammad Mohaqqueq, chairperson of the Commission of Cultural and Religious Affairs of the Wolesi Jirga another Islamist figure, supported the inclusion of democratic and human rights elements in this law. On 29 April 2009, Mohaqqueq in an interview with the Daily Outlook in English, viewed the law violating women’s rights as an affront to the dignity of the Shias”.¹⁹

The Islamists form three major groupings inside the Afghanistan’s parliament.

The Secular Islamists

The secularist trend belongs to a tendency that demands the substitution of a Sharia-based legal system with a secular legal system. They define economy, culture and politics as secular realms and indeed as part of human experience. They advocate a market economy, material punishments, freedom for the activities of the political parties and the earthly origins of power. Thin kinds of thoughts are meagerly being observed in Afghanistan’s parliament. They can be labeled as liberal-conservatives of Afghanistan as they have adopted Muslim-democratic parties such as Muslim League in Pakistan, Mohatmir Mohammad Party in Malasia, Justice and Development Party of Ordughan²⁰ in Turkey as their model of behavior instead of inspiration by radicals such as Sayed Qutb, Mawdudi, Abdullah

18. Interview with Mohammad Jawad Sultani, 25.06. 1388

19. Outlook Afghanistan, 29 April 2009

20. For a brief study of Muslim-Democratic Parties, refer to this work: Vali Raza Nasr, “Muslim Democracy”, translated by Amin Ahmadi and Mohammad Ali Joya, Seraj Quarterly, Exclusive to Democratization in Afghanistan.

Azzam and Osama Bin Laden. It appears that social and structural limitations and their poor understanding of organizational structure have deprived them from access to their ideal model in the rest of the Islamic world.

The Traditionalists

The traditionalist current is opposed to radical changes especially in the legal field. In practice, they do not contemplate beyond the preservations of the traditions and the symbols. Those among Afghanistan's Jihadi leaders that are associated with the mystical traditions in the country may likely fall under this category. The main attitude of the traditionalists is preservation of the status quo. They do not welcome violent and radical transformations and insist on the protection of the symbols of traditions rather than on loyalty to their substance.

The Fundamentalist

The fundamentalist trend is a rigid ideology that attempts to retard history and in principle they are loyal to the early Islamic model of governance such as monarchy or caliphate. They aspire to the simplification of everything and to a total return to the past. Their model of governance is the Islamic caliphate of the medieval age. This return to a past model is something that Oliver Roy has called 'the judgmental substance of politics'. "Politics is the judgment that has expanded...therefore a Muslim state is distinguishable from an Islamist

state".²¹ The current described in this way by Olivier Roy seeks past models of governance, and has an effective presence in Afghanistan. The Islamic Emirate of Taliban aspired to the realization of such a model of governance. They reject all forms of modernization; confine legislature to a divine source; reject any constitution in presence of Quran and oppose all kinds of laws that have not originated from divine text, traditions and religious.

2. The Former Leftists

The remnants of the past leftist parties such as Khalq and Parcham, also constitute a small faction in Afghanistan's current parliament. Afghanistan's left has reviewed its political ideology and in practice does not show anymore a high level of commitment to the idea of a centrally planned economic system. They often advocate for rule of law and the establishment of a secular political system in Afghanistan. However, they have little genuine influence. Ismail Akbar, one of the experts on the left current in Afghanistan, believes: "The past obnoxious events and violence have overshadowed the status of the leftist movement at present and have placed it in a defensive position. The small parliamentary groups of this movement can in no way represent the leftist thought in the country".²² Despite this relatively pessimistic judgment, the presence of the left in Afghanistan's parliament indicates a serious political disposition that influences the legislation process and they must not

21. Oliver Roy, "Afghanistan, Islami and Political Modernism", Translated by Abdul Hassan Sarvi Moqaddam, Mashhad, Ostan Quds Razavi, p. 124, 1369

22. Interview 1/7/1388

be ignored in inter-parliamentary political alignments. Mr. Akbkar says: “If they learn lessons from their mistakes, they can play significant role in consolidating democracy and contribute to the spread of new thoughts by civic and peaceful activities”.²³

3. The Intellectuals

By disposition, the intelligentsias are composed of marginal groups in most of societies. These marginal groups primarily include women and youth. Given the fact that the minimal age margin considered for

and headship of the parliamentary commissions. (See tables No 9 and 10) However, they often demand legal equality and equal social prestige. The evolution of a feminist movement, albeit embryonic, can be witnessed among these women. Shinkai Karokhail is one of these “who maintained, in particular during the approval of the Law on Personal Affairs of the Shias, that human rights’ standards and the principle of equality among all human beings were to be respected with regards to rights and obligations of men and women in the family environment, She believes that: “Stringent

Table9: Number of Women in Administrative Board of the Wolesi Jirga during the Last 5 years

Year	Occupation
2006	Second Deputy of the Speaker of Wolesi Jirga
2007	0
2008	0
2009	0
2010	0

Source: <http://www.parliament.af>

Table10: Number of Women Elected as Heads of Commissions of Wolesi Jirga during the Last 5 Years

Year	Number of Commissions
2006	2 commissions (Natural resource commission – Women affairs, civil society and human rights commission)
2007	1 commission (Women affairs, civil society and human rights commission)
2008	1 commission (Women affairs, civil society and human rights commission)
2009	2 commissions (Natural resource commission – Women affairs, civil society and human rights commission)
2010	2 commissions (Natural resource commission – Women affairs, civil society and human rights commission)

Source: Office of Organizing Meetings of the Commissions of Wolesi Jirga

those standing in the election is 26 years in the law and according to the constitution, one 3rd of the members of the Wolesi Jirga are women, therefore, an important and active intellectual faction has emerged in the Wolesi Jirga of Afghanistan.

In the Afghanistan’s 249-member Parliament, there are 68 female MPs. These female MPs lack uniform view. And because of this they are melted in ethnic and political groupings rather than to form a feminine-identity-centered structure. This lack of integration and solidarity among the women is reflected in the compositions of the Wolesi Jirga Administrative Panel

understanding about women originates from rigid-minded people and has nothing to do with Islam. Without putting aside religious instructions, and with a more modern understanding of the religion, the human rights of women could be provided”. Ms. Karokhail in response to the question that in some Islamic countries such as Tunisia, both men and women have equal rights says: “All Muslims are the same. Whatever is allowed for the Arab Muslim, why should not that be allowed for the Afghan Muslims as well?”.²⁴ However, the realities on the ground reveal that several problems lie ahead of Afghanistan’s intel-

23.Interview, 1/7/1388

24.Interview 10/6/ 1388

lectuals as well as women in a society with strong traditional structures. For example, Sheikh Niamatullah Ghaffari, a clerical member of the parliament, believes: “God has ordered women not to go outside home without the permission of men”.²⁵

The intelligentsia in the parliament, both women and youth, aspire to the formation of a tolerant society. They list respect for individualism, flexibility in social relations, concern for privacy, civic freedom and democratic principles as their priorities. However, this spectrum is weak both intellectually as well as socially vis-à-vis the Islamists, in particular in its most radical forms. As result, they have not been able to do much in consolidating democracy and advance a new political culture.

B. Political Parties

In Afghanistan, political parties are in fact a part of the political movements described at the section 7. But since the ground has been prepared for growth of the political parties, most of the political parties have melted to the above-mentioned religious and political movements, lacking their defined political functions. However, it is necessary to describe the political parties in Afghanistan. So far, there have been over a hundred political parties registered to the Ministry of Justice (MoJ). The main issue about the political parties is that these parties do not have exactly their defined functions and cannot play the role of a rival to the government or mediated between the

government and the people. Therefore, do not have much efficiency a significant role in political array in the country. But analytical reference to the problems of the political parties in itself is helpful to the exploration of the weaknesses and the vulnerable points, and at least it can point to the vacuum of political parties in Afghanistan. Failures of the political parties are specifically connected to the following factors:

- Lack of required legal ground and appropriate laws for development of the political parties. In absence of a system for the parties, a political party cannot be functional. In Afghanistan, establishing political parties is recognized by the law, but there is no share for the political parties (not the personalities of the parties) in election law. Thus, the ground for the parties provided by the constitutions is virtually nullified in the election law.

- In Afghanistan’s political custom, the political parties do not have their proportionate definition even in the minds of the political elites. Therefore, the parties have evolved as ceremonial and decorative. Political parties as a part of political reality that can lighten the burden on government’s shoulder have not found yet its right place in the minds of the political elites.

- In absence of political culture, political parties cannot be developed. Event if the required law and legal ground is prepared –which is not prepared yet–, without appropriate political culture, the parties cannot have required political efficiencies. Recognizing different viewpoints in culture, society, politics, economy and international relations is the main pre-condition for de-

25. This discussion took place in a meeting by the joint commission of Shia –Sunni clerical members of the Afghanistan’s parliament on 28/8/1387

veloping culture of politics proportional to the activities of political parties.

- And finally, the political parties are entangling with difficulties regarding to the operational forces and party officials. Most of the political elites who are involve in political activities through political parties, do not have a clear concept of the nature and scope of their activities. Therefore, one cannot observe required legal activities by the parties for developing a political proper ground.

As a result of these factors political parties remain weak and unsuccessful. In the parliament, the political parties not only proved ineffectual but the core of a party, which usually originates from the parliaments, were not established in the House. On the whole, one can consider the place of political parties in the parliament as vacant and doubtlessly this is one of the defects and weaknesses of the current parliament. Presence of potent political parties in the parliament would facilitate the legislating process in the legislative body and helps it to be more transparent. Now, the question is whether the next parliament will redress the fault, or not?

These observations indicate that active players in the political arena of Afghanistan operate in an atmosphere of chaos and disorganization. And it is expected that such a chaotic circumstance in political groups influence the legislative process in Afghanistan. Different perspectives and differences of ideas shall only be understood through such diversified backgrounds. Differences of opinion on certain rules, proposals and draft laws that were observed during this

legislative period, were occasioned more by differences in political views and ethnic motivations than differences in legal views.

7. Voting Patterns

In view of what has already been explained, the voting pattern in the parliament (Wolesi Jirga) appears to be composite and complex. In absence of potent and organized political parties as well as lack of methodical and stable political-parliamentary groupings it would be difficult to talk about a stable and regular voting pattern.

The claim that Afghanistan's people have voted or vote what the tribal elders or political leaders dictate, has no foundation. This does not imply that the MPs vote on non-ethnic basis. The voting pattern is influenced by: ethnicity, pre-modern tendencies, expansion of public sphere, religious beliefs, socio-economic issues and ideological differences.

1- Ethnicity

Ethnic tendency is something taken for granted among the Afghan voters. This reality revealed itself both in the presidential as well as in the parliamentary elections. However, it does not mean that no voter voted for candidates other than that of his/her own ethnic group. Indeed, the result of the first presidential election and to some extent the second presidential election demonstrates that the factor of ethnicity cannot be ignored in the analysis of the voting patterns in this country. In most voting cases in the Wolesi Jirga, ethnicity has had

paramount importance. Political analyst Mr. Ikram Andishmand believes that the ethnic moves begun at the initial days of the Wolesi Jirga as the MPs voted on the composition of the administrative panel of the House particularly the chairmanship of the Wolesi Jirga. He says “prior to the parliamentary election, there was no hint of candidanship of Abdul Rab Rasool Sayaf for the chairmanship of the Wolesi Jirga, while candidanship of Burhanuddin Rabbani for the post was declared even a long time before the parliamentary election. But after the election, Sayaf was unexpectedly announced as nominate for the post of the parliament’s speaker. The negotiations failed and Burhanuddin Rabbani told angrily to Sayaf, who did not give up his candidanship, that whether other peoples and ethnics in Afghanistan are immigrant to accept monopoly of power by one ethnic group. While, Mr. Karzai had promised Rabbani to help him for the position, but Qayom karzai –President Karzai’s brother– and other supporters of the president were campaigning in Wolesi Jirga for Sayyaf. Altogether, candidanship of Sayyaf for the post of Wolesi Jirga’s speaker through ethnic stance and unofficial and undeclared support of President Karzai, led the parliament to a new ethnic arrayal, causing intense concerns on creation of a monopolist and non-national government and instigating ethnic sentiments in the parliament. Many of the non-Pashtoon representatives pressurized Burhanuddin Rabbani and Younos Qanooni to withdraw in favor of another. Finally and after series of negotiations Burhanuddin Rabbani accepted to quit the race for the post of speaker of the

parliament in favor of Qanooni, while he was deeply disappointed of Hamid Karzai’s position and Syayaf

Mr Ikram Andishmand believes that “the results of both races for the chairmanship of the parliament proved that the parliament has been driven to the ethnic lines as the result of the faulty and ethnic-centered policies of the government and its leadership. At the first round of the voting, the votes of Pashtoon MPs somehow divided and Sayyaf obtained only 88 votes. But at the second round he obtained 117 votes, which is meaning that he obtained all votes of Pashtoon MPs at the second round of the voting. Ramazan Bashardost, a Kabul representative, and Malalai Jooya abstained from voting for the two main candidates

Regretfully, most of the parliamentarians, who are to be the exemplar of the will of Afghans and should consider the national interests in their decisions, are trapped by the faulty politics. For more than four years, they have demonstrated their affiliations with the ruling tribe-lords officials

and five other MPs casted blank votes. All other Pashtoon MPs voted for Sayyaf and non-pashtoons voted for Qanooni. Possibly there were some exceptions among the MPs who casted their votes not based on ethnic attachments but based on personal or factional relations, but the general process of the voting was based on ethnic lines.”²⁶

With each year passing the ethnic-dominated approach in the parliament intensified. There have been serious confrontations between the ethnic fronts in Wolesi Jirga and in many cases ethnic groups boy-

26. The hidden facts in the race and selection of the speaker of the Wolesi Jirga, 5 Jaddi 1384, Aryaei Website, Mohammad Ikram Andishmand

cotted the Wolesi Jirga sessions. In recent months, the confrontations in the Wolesi Jirga reached to a point that the Hazara and Uzbek minister designates could not obtain the confidence votes of the Wolesi Jirga in two rounds. A member of the Wolesi Jirga Dr. Kabir Ranjbar believes that “the approaches based on ethnicity, language and religion have been a main point of the Wolesi Jirga’s weakness and the main factor for approval of the incapable and inefficient ministers. If the Mps had considered the national interests during the process of confidence voting for the cabinet nominees, the consequent confusions would have been prevented.”²⁷

‘The Political Association of the New Direction’, which is a parliamentary group, released a statement on the rejection of the cabinet designates, saying that “the dominant team (in the government) has dividend the government and other pillars of the state by pursuing its goals through ethnic instruments and intensifying divisions to use them for their tactical ethnic and political goals. Regretfully, most of the parliamentarians, who are to be the exemplar of the will of Afghans and should consider the national interests in their decisions, are trapped by the faulty politics. For more than four years, they have demonstrated their affiliations with the ruling tribe-lords officials.”²⁸

2- Pre-Modernist tendency

As previously indicated there are left and right wing tendencies (liberal conserva-

tive) in the parliament. These tendencies influence the patterns and the incentives of the Afghan voters on their own. The Afghan modernization current has not been successful and dominant however, it has not been that much inertial as well. Since this one last century that Afghanistan has had an interface with modern thinking, it has its own followers who can not be neglected in analyzing the Afghan voting pattern. The approval of a relatively better media law is an example that shows the modernist influence on voting trend.

3- Expansion of public sphere

The expansion of public sphere and the creation of opportunities for maneuver by individuals is another factor that should not be neglected in analyzing voting patterns in Afghanistan. Although, to a great extent, individual freedom and the enlargement of the realm of activities of the citizens is part and corollary of modernist tendencies, still, owing to its significance in modern life, it is essential to specifically point to it. The Afghan voters have now turned greater freedom of action into a popular demand as they are discontented with the extensive social restrictions imposed on them under the Taliban regime. Undoubtedly, the expansion of the public sphere and the creation of greater opportunities for individual and collective civil action represents an important factor in looking at the pattern of the Afghan voters.

27. Bakhtar Daily, <http://brishna.org/2.245.htm>

28. The Political Association of the New Direction, Statement dated 8 Saratan 1389, on rejection of minister designations, Kabul, <http://ligan.mihanblog.com/post/73>

4- Religious Current

Apart from the Taliban group, which will not be attended to in this discussion, there is no other political group in Afghanistan that operates purely according to religious slogan or religious inclination. As seen earlier, there are political groupings in Afghanistan's parliament with Islamist tendencies. However, this does not signify that pure religious tendencies among the Afghan citizens do not exist and that some of them may not consider their religious motivation in exercising their votes. Though such a tendency does exist, it is not that common. At least, over the past five years, no controversy originating from religious tendencies or religious beliefs has been observed.

5- Socio-economic issues

Welfare factors and hopes for a better life hold the most important positions in analyzing voting patterns among Afghan citizens. Over the course of the two last elections held in Afghanistan, there were no candidates which did not chant the slogan of a 'better life' for Afghan citizens. All the electoral promises were pinned to providing welfare, security and change in the existing living conditions. Even the candidates with religious inclinations, could not ignore the issue of welfare and comfort. This point leads to the conclusion that welfare and change in living conditions is a serious popular demand. The citizens definitely implicate this demand in their voting and this factor cannot be ignored in the analysis of the voting pattern in the Wolesi Jirga, in particular among those MPs who

want to run for the next parliamentary election. Indeed, the most effective channel to ensure their 2nd electoral success is that they minimally meet the promises they have made in first parliamentary election. Therefore, welfare is another factor that influences voting pattern.

6- Ideological differences

In conclusion, there is a need to point at ideological and political differences. Ideological differences and differences of political opinion are another factor that influence voting pattern among the Afghan citizens in their own right. This issue is also well reflected in the parliament and later it will be discussed with regards to a law known as National Reconciliation Manifesto.

Taking into account the above- mentioned six factors, it is not possible to reduce voting pattern to a single factor like economy, Sharia, or imitation of the tribal elders or political leaders.

Ethnicity, modernist tendency, the prevailing environment, availability of individual choices, religious inclinations, and socio-economic factors ideological differences and different political perspectives also should not be overlooked at all. Thematic models that have been looked at in this research also reveal that differences of ideas have never had an ethnic origin alone. The ethnic diversity of the parliament indicates the Significance of the ethnicity in this country. However, the parliament enjoys as much ethnic diversity as it does ideological and intellectual diversities. Whereas the legal

frameworks and procedures have not yet been fully established, intellectual differences often result in ethnic, linguistic and even regional controversies. The samples chosen for this research simultaneously reflect the diversity of the viewpoints and the complexities of contemporary Afghanistan as well as the primacy of issues such as ethnicity, race, and language in this country. Dr. Mohammad Amin Ahmadi, dean of the Ibn-e Sina Institute of Higher Education, himself a member of the Supervisory Commission on Implementation of the Constitution and a former member of the Constitutional Review Commission of Afghanistan says: "It is one hundred years that Afghanistan has been in contact with the modern world. It is true that modernity has not become the predominant discourse but modern thoughts have influenced large parts of the society. Afghan contemporary society is fully an open society from the point of view of tendencies. However, there are two problems. First, that tendencies usually remain such and lack in depth, while the second problem is that there is a broader managerial flaw originating from the laws in this country, which causes these tendencies not to be defined in a common environment and compete with each other".²⁹ The research variables chosen here too reveal that Ahmadi's viewpoint is correct. The controversies that exist in today's Afghanistan in areas such as administration, legislation and the broader political structure can in no way be reduced to traditional parochialisms but rather they have modern origins.

8. Factors for Analysis (Research Variables)

Undoubtedly, the voting pattern that dominates the Afghan parliament has seriously influenced the legislative process. In addition, other factors such as attempts at gaining access to more power and other unpredictable measures can create troubles for legislation. However, as for what the current legislative process has revealed, four factors mainly influence the legislative process in Afghanistan's parliament and serve as basis for the political alignments as well.

The typology of groupings that we presented earlier indicates the diversity of views in Afghanistan's parliament. But the political controversies over legislation usually fall under the four following factors. Though other important factors might also intervene in the political configurations, I will focus this research at the analysis of these four factors:

1. Differences of ideas with regards to political power and its administration,
2. Linguistic differences and the way Persian language interacts with Pashtu language, as they are both recognized in the constitution as the official languages of Afghanistan,
3. Ethnic disputes,
4. Ideological disputes.

To varying degrees, all inter-parliamentary groups are being influenced by these four factors. One of the paradoxes of the current Afghan society, which is also somehow re-

²⁹. Interview, 15/5/1388

flected in the parliament, is that modernist tendencies and the demands for the formation of a society based on welfare, security, and civil norms, are intermingled with ethnic and racial inclinations. Even the intellectual and progressive parliamentary groupings are not free from racial and linguistic preferences.

Table11: The Status of Legislations Researched for this Paper

Higher education law	No Agreement Reached So Far
Amnesty law	Approved
Election law	No Agreement Reached
Media law	Approved

Source: Interview with parliament member

Many demarcations are quite discernible in other areas but they lose their distinctiveness vis-à-vis this factor and satirically slide into ethnic, linguistic and ideological folds. In most cases, they operate based on the preferences of the structure of the power rather than the nature of the legislation. Mohammad Jawad Sultani, a sociologist and University lecturer says: “ It is natural that Afghan modernization is interwoven with racial and linguistic dispositions. The notion of the general application of Pashtu language was accompanied with the emergence of modernist thoughts in Afghanistan. Historically, It was first Amanullah Khan who established “Pashtu Maraka” (Pashtu Association) in Afghanistan. Some progressive intellectuals such as Mahmood Tarzi demanded the generalization of this language. At present, the modernist class is more biased with regards to language compared to the traditional classes”.³⁰

I analyze the above-mentioned four fac-

tors within the framework of the four controversial laws. The four controversial laws are:

1. Mass Media Law;
2. Higher Education;
3. Electoral Law;
4. National Reconciliation Law (National Reconciliation Charter) (For more information about present status of these four laws, see table No 11)

Reviewing the differences of ideas of the MPs with regards to these laws reveals the previously mentioned four factors to be influential both in legislation and in the internal political configurations of Afghanistan’s Parliament.

1. Mass Media Law

The Mass Media Law is one of the relatively good laws Passed by the Afghan Parliament as considerable media freedom is stipulated in this law and profuse facilities are predicted in it for the dissemination, publication and flow of information. Clause 1 of the article 4 of this law articulates that “Freedom of thought and expression shall be the right of each individual”, and considers seeking information from the government and the free dissemination of information and news without commitment to the revelation of the source of information, as part of those individual rights. The 2nd clause of the same article explicitly says: “ The state supports, promotes and guarantees the freedom of mass media. No legal and real person including

30. Interview 15/5/1388

the state and its administrations shall ban, sanction, censor or limit the free activities of the news or information media or otherwise interfere in the affairs of the mass or information media”.³¹ Haji Mohammad Mohaqqueq, head of the Cultural Affairs and Education of the Lower House of the Parliament, whose commission played a central role in the formulation of this law, says: “The mass media law of Afghanistan is formulated with a positive view to the new global political and cultural transformations. This law, which is highly thorough and technical in terms of guaranteeing the legitimate freedoms that are stipulated in the constitution, is something unique with respect to similar laws in the region and it absolutely corresponds to the established international standards”.³² The approval of the Mass Media Law indicates that potential does exist for the formulation of modern laws in Afghanistan. However, the subsequent saga of this law demonstrates that, irrespective of the clash between tradition and modernity, the structure of the ruling power also influences the legislative process and its enforcement. Media law is one of the few laws that the president refused to promulgate, and it was afterwards returned to the lower house of the Parliament. After two thirds of the Wolesi Jirga members approved it again, so that it did not require presidential promulgation anymore, the law was taken to the Supreme Court, where its enforcement was delayed. The controversy then centered around paragraph two of the Article 13 of the law, which required the head of the National Radio and Televi-

sion to be confirmed by the Wolesi Jirga. This paragraph implied that the department will no longer be under direct control of the state and the government therefore rejected it.

The supporters of the government were attempting to offer legal justification in favor of the government, but soon the government felt that this decision would undermine its popularity among public opinion.

By referring the law to the Supreme Court, the government modified it and announced its enforcement. Indeed, it shows that a strong tendency towards the centralization of power drastically influences the legislative process. As a Wolesi Jirga member Mir Ahmad Joyenda believes “along the history of the country, it has not been acceptable for the government officials to be supervised by the Wolesi Jirga, causing repeated confrontations between the government and the Wolesi Jirga.”³³

In May 2009, when the MPs summoned the Minister of Culture for an interpellation owing to the non-enforcement of the law, majority of the MPs voted for his impeachment. On the following day though, the majority of MPs who finalized the law (by two thirds of the votes) did not reject the minister. This demonstrates that the power structure, which is tilted towards maintaining a centralized form of power,

Motives for gaining power which mostly find no transparent ground, in struggles between the legislative and executive systems sometimes result to temper changing and contradictory positions from the executive system side. As it happened in impeachment case of Abdul Karim Khurram in Wolesi Jirga on april 2009.

31. Official Gazette, Mass Media Law (986) 25 Saratan, 1388

32. Interview, 6-7, 1388

33. Bakhtar Daily, <http://brishna.org/2.245.htm>

resists against structural transformations. Mir Ahmad Joyenda, an active Kabul MP, says in this regard: “ The formulation of laws in Afghanistan faces several problems, such as religious and political constraints. The government feels that some laws may limit its power, and it challenges them and us all with problems regarding the

the head of National Radio and Television Department. The MPs who had introduced this clause into the law aimed more at controlling the state and, if required, exerting pressure on it. Motives for gaining power which mostly find no transparent ground, in struggles between the legislative and executive systems sometimes result to tem-

Table13: Group Protests and Boycotts by Members of Wolesi Jirga

Issue	Date	Reason	Outcome	Comments
Electoral Law	2008	Protests against Reservation of 10 Seats in the Parliament for the Nomads and ways of their participation in the elections	No outcome	Approximately 100 members of the Wolesi Jirga demanded the elimination of the reserved seats for the nomads and boycotted the assembly for one month
The Law of Higher Education	2008		No outcome	
		The Official name of University as Danishgah in Dari or Puhantun in Pashtu		Herat MPs were protesting against local governments in the province
Provincial Administration in Herat		Inability and Inefficiency of Government Departments and Agencies in Herat		Ghazni MPs were protesting against local governments in the province
Provincial Administration in Ghazni		Inability and Inefficiency of Government Departments and Agencies in Herat		Wardak MPs were protesting against local governments in the province
Provincial Administration in Wardak		Inability and Inefficiency of Government Departments and Agencies in Herat		

Source: Interview with MPs

enforcement of those laws. Regarding the media law, sect and religious issues were not involved. But the government thought it might have weakened its power”.³⁴

Table12: Voting Figures Concerning Karim Khurram, the Minister of Information and Culture

Voting figures on deciding to impeachment of Mr. Khurram on 18 April 2009		Voting figures on Mr. Khurram on 20 April 2009	
Positive votes	55	Positive votes	71
Negative votes	71	Negative votes	52
Number of Participants	126	Number of Participants	123

Source: Directorate of Parliamentary Affairs, Hansard Database

It is also true that MPs do not stick to legal arguments, rather they are driven by the ambition to get more power. There is no credible legal argument for the prerogative of the National Assembly to confirm

per changing and contradictory positions from the executive system side. As it happened in impeachment case of Abdul Karim Khurram in Wolesi Jirga on april 2009. (See table No 12) The Judiciary (Supreme Court) and its high justice panel enjoys the delicate legal argument that the majority of MPs in favor of the article 13 had ignored it. Once the law was referred to them, the High Judicial Council of the Supreme Court held a judicial session on 26/1/1388. It explained that: “ As it is viewed, the conditions for the determination (confirmation) of the above-mentioned individuals by the Wolesi Jirga, according to the above-mentioned constitutional articles, is stipulated in the constitution and any kind of addition to that requires constitutional amend-

34. Interview, 7-10, 1388

ments which exclusively falls under the jurisdiction of a Loya Jirga”.³⁵ As this statement suggests, the Supreme Court’s argument is predicated on a logical premise and that when the legislator specifies the Attorney General, General Director of NDS, why does not he specify the presidency of the National Radio and Television? Non-stipulation of the Department of National Radio and Television implies that technically Wolesi Jirga shall not confirm it. It is quite clear that such legal arguments indicate positive signs in the legislative process, however, the influence of the element of power can in no way be ignored and its role in stimulating such controversies can not be denied.

With regards to the Media Law, it is worth stating that the different political groupings did reach a considerable consensus over this issue. However, the element of power (government) created new political alignments. This shows that the political groupings are not imaginary and unreal, but they get diluted vis-à-vis the political power.

2. Higher Education Law

Unlike the Media Law, the controversies on which originated from the power structure and its tendency towards centralization and monopolization of political power, the controversies over the Higher Education Law involved a different factor. This factor is not determinant from a legal and legislative point of view, but since it is linked with ideational issues, it is not only considerable but also important and sensitive.

The policy of repression of identities, which rules in Afghanistan since long ago, has encountered serious challenges over the recent years, and in particular over the last three decades. Currently, there is an increasing tendency among the different Afghan ethnic groups to express their ethnic identity. Hassan Razaei, a Lecturer of Sociology at the Kateb Institute of Higher Education believes: “The suppression of ethnic identities and racial and linguistic discriminations, which have existed in the history of Afghanistan, have turned into a Complex phenomenon. Now, each nationality wants to express its ethnic identity. This expression does not take place in an easy way. There is always resistance and every group speculates other identities as its enemies and as threats to its own identity. Therefore, under the current circumstances, we live in a condition of war of identities”.³⁶

Regarding the Higher Education Law in Afghanistan and the subsequent controversies, we witness exactly the phenomena that the above-mentioned expert labeled as: “War of Identities”. It is true that the MPs had differences of opinion with regards to academic ranks/ grades (Pohand, Pohanmal and etc) and the legalization or non-legalization of distance learning education, however, the real controversy was over the academic ranks to be in Dari or Pashtu and the Dari equivalent of Pohantun and Pohanzai in legal documents. In the draft law, all the articles where the terms “Pohantun” and “Pohanzai” were used were “source of trouble. Non-Pashtun MPs had insisted that along with the Pashtu names, the Dari equivalent for the institutions and for aca-

35. The Ordinance of the in-charge judge in the official Gazette (986) in which the Mass Media Law is printed.

36. Interview, 15/7/1388

demic ranks should also be added by terms of law. Like “Pohantun” which is a Pashtu term, its Dari equivalent “Daneshga” should also be used.

It is regrettable that instead of debating vital issues such as distance learning, the recruitment procedures and improvement in the quality of education, bilingualism in the names of institutions and academic

language can seriously influence the legislative process.

The opponents of the Dari equivalents refer to the last paragraph of the Article 16 of the Constitution, which stipulates that the preservation of existing national terminologies is essential. The opposition bloc states that Pohantun (University), Pohanzai (Faculty) and Pohand (Professor) are not



Wolesi Jirga members casting votes

ranks was seriously disputed. The controversies were so intense that a specialized commission was established to look at the issue. This issue still remains insoluble.

As stated, the controversy over the Law on Higher Education, in particular the question of the equivalents in Dari for the educational institutions, (like Daneshga (Dari) along Pohantun (Pashtu and Daneshkada (Faculty) along the Pohanzai in Pashtu) does have significant effect on the conditions of higher education in the country. If we consider it, as the experts put it, as a “War of Identities”, the conclusion that can be drawn is that identity issues such as

national terminologies, but rather names of common usage, which equivalents in other languages. Noor Mohammad Atapour, lecturer at the Faculty of Science of Kabul University believes: “What is the difference between Zezhantun (Maternity Facilities), Roughtoon (Hospital) and Pohantun (University)? We have equivalents in Dari for these terms such Shafakhana for Roughtoon, Zaeshgah for Zezhantun and for Marastoun we have the Dari equivalent Parwarishgah (Nursery). Why should not we use Daneshgah, the Dari equivalent for Pohantun?”³⁷

37. Interview, 7/10/1388

Reference to the Article 16 of the Constitution intensifies rather than reduce the controversies. Abdul Hafiz Mansour, member of the emergency loya jirga, believes that the government has changed this article and that, in this particular instance, a registered complaint does exist. Mansour says: “ I do not recognize anything by the name of national terminologies. It is fabricated in the Constitution...when it was added the point that the national and administrative terminologies should be protected, we as a group of delegates of the Constitutional Loya Jirga filed a complaint with the chief justice Fazl Hadi Shinwari and Abdul Halim Saqeeb, head of the office of the Chief Justice, gave us a receipt confirming the registration of the complaint”.³⁸ Habibullah Rafee, however, opposes this idea: “ I think it is justice that our national terminologies should be composed of all languages. If you do not accept a Pashtu term, then the Pashtuns will not accept a Dari term. This will end up in polarization and our nation will move towards dispersal”.³⁹ Ayatullah Sheikh Asif Mohseni, a Kandahari Shia who is known to have relations with the government in terms of political alignment, also believes that the addition of the academic terminologies to this article is manipulated. He says: “The subject of this article (16), as far as I remember, had not obtained the majority votes in the commissions and it was voted for in the plenary session”.⁴⁰ He adds to the footnote of the same page that: “In the printed version that was promulgated by the President of Islamic Transitional

State of Afghanistan, after the end of the loya jirga, it was apparently added by the honorable chairman of the loya jirga – that the existing academic and administrative terminologies shall be kept – and it is not to be considered as part of the Constitution at all”.⁴¹

Saleh Mohammad Registani was one of the most decided among those MPs that wanted to include the Dari equivalent of the institutions and academic ranks. He says: “The opponents of the equivalents of Dari lack any credible legal argument. The main issue is the preservation of ethnic power”.⁴² The majority of those who, like Registani, favour the inclusion of Dari equivalents along with Pashtu terms into the law of higher education, have turned the issue into part of the controversies around power politics. In current Afghanistan, the connections of “power” with “identity” cannot be denied; however, the controversy over language in the higher education law can be better explained in terms of identity than power. As the previously quoted statement by Hassan Razaee, sociologically, Afghanistan finds itself in a condition of “clash of identities”, and such controversies and disputes satiate more the communal feeling of groups and class-

Inclusion of the Dari equivalent threatens more the identity of the people than the power of individuals and groups. As long as the crisis of identity and racial identity-seeking have not found their logical ground, it will be difficult to find peaceful ways to access to and control any transfer of power.

38. Haftanama-e Mosharekat-e Melli, Organ-e Nasharat-e Hizb-e Wahdat-e Islami Afghanistan, 8/3/1387

39. Mosharekat-e Melli, ibid

40. Mohammad Asif Mohseni, Constitution, p. 46

41. Ibid

42. Interview, 11/7/1388

es than be used of the people. Razaei says: “Inclusion of the Dari equivalent threatens more the identity of the people than the power of individuals and groups. As long as the crisis of identity and racial identity-seeking have not found their logical ground, it will be difficult to find peaceful ways to access to and control any transfer of power”.⁴³

3. Electoral Law

The Electoral Law in Afghanistan represents another challenge ahead of legisla-

single constituency”.⁴⁴ Non-Pashtun MPs in the Wolesi Jirga, viewed this article as a privilege to the Pashuns and therefore opposed it.

Like other instances, the controversies over some articles of this law had less legal substance and originated more from ethnic and cultural heterogeneities and uncertainties about how power may unfold in the future. If seats are not allocated for the Kuchis and they vote in their relevant provinces like other citizens, will it result in a violation of their rights? Wolesi Jirga MPs have different views in this regard.



A view of Wolesi Jirga Session

tion in this country. This law was also one of the most controversial laws during this legislative period. In 1377, debates over the Electoral Law resulted in the strike of one hundred MPs, and the plenary session remained below the quorum for months. The debate was focused on the Article 11 of this law, which decides the constituency. This article says: “ For the Kuchis, the whole territory of this country is considered one

Mohammad Hossein Fahimi believes that their rights will not be violated at all. He says: “The Kuchis do send representative from their camps to Wolesi Jirga. All those sent as representatives on behalf of the Kuchis are either local feudal or urbane Pashtuns. In reality, this serves as a pretext for increasing the number of the MPs of one specific ethnic group”⁴⁵. He adds:

43. Interview, 15/7/1388

44. Electoral Law, Chapter 3, Article 11.

45. Interview, 15/7/ 1388

“The government intensively exploits the Kuchi issues and employ them as a political instrument against other nationalities”.⁴⁶ However, Mawlawi Tarakhail, Kuchi representative in Wolesi Jirga, believes otherwise: “The government has also committed oppression against Kuchis. Kuchis are the most indigenous people of Afghanistan and the real owners of this soil⁴⁷. It was this statement by Tarakhail that enraged the non-Pashtun MPs, who consequently went on strike.

These controversies illustrate that there still exist formidable constraints ahead of rule of law. It is true that ethnic and racial conflicts are being expressed in the guise of legal arguments, however, it is too premature for these disputes to fully transform themselves into legal debates and for the parameters stipulated in the Constitution to serve as the framework for legislation.

4. National Reconciliation Charter

Another of the laws that provoked tremendous controversy in the parliament - and whether it has become law or not, still remains disputed - is the law called national reconciliation. This law is also a good entry point to better understand the challenges that an ideal legislator in Afghanistan have to face. In addition to revealing the ideological disputes in modern Afghanistan, this law also demonstrates the interaction of some political forces in Afghanistan with the international community; an interaction that is based more on suspicion and speculation than on a true, reciprocal understanding.

46. Ibid

47. Newsletter, National Assembly.

The Transitional Justice Process represents the background to this law⁴⁸. The active civil society organizations in Afghanistan strongly advocated the execution of this project. The international community also was unable to fully ignore human rights values. The years between 1357 and 1380, a period of 27 years, were defined as an era in which justice was absent from the country, and it was now the time to redress the past injustices. During this period, three groups have alternately ruled Afghanistan.

1. The Afghan communists and leftists that remained in power for 13 years, from 1357 to 1371. Early years of rule by this regime were replete with violence, inter-group purges, summary killings and mass murders. Mr. Farhang, the contemporary historian, has written about Noor Mohammad Taraki, the most famous ruler of this era: “They naively thought they might calm down the people by killing their opposition. And if they were not silenced, they would continue the murder to the extent that no more than a million supporters would remain alive”⁴⁹.

2. The Mujahedin ruled from 1371 to 1375. The Mujahedin government spent all its time in civil strife. The major destructions in Kabul took place during this period. Killing of civilians, assaults on women and children have massively taken place at the hands of the conflicting parties. One of the cases which was widely reflected by international media is the 16 March 1993 massacre that took place in Afshar neighbor-

48. For more information please see; Charting a Course for a Sustainable Peace: Linking Transitional Justice and Reconciliation in Afghanistan, may 2010, Bator Beg and Ali Payam, Afghanistan Watch

49. Farhang, Ibid, p. 148

hood, located in western Kabul⁵⁰.

3. Taliban ruled from 1375 to 1380. In addition to enforcing strict laws, Taliban are accused of perpetrating racial and ethnic purges, killing of civilians and mass murder. There are credible reports made available by the international organizations, especially those by Amnesty International, UN

opinion survey in 1383. This opinion poll, which involved interviews with the victims and families of the victims, also revealed the bulk of the crimes that had taken place. According to this report published in 1383 under the title of “The Call of Afghanistan’s People for Justice”, four groups, either operating within the framework of the government or as its collaborators, had com-



commemoration of the Afshar Massacre, Kabul- 11 Feb 2010

High Commissioner for Human Rights and Human Rights Watch, about mass killing by Taliban in Mazar, Bamyan and Yakawlang⁵¹.

The Transitional Justice Process had undoubtedly targeted the suspects of this period (1979-2001). Afghanistan’s government was supposed to carry out this project together with Afghanistan Independent Human Rights Commission and with the support of civil society organizations and the participation of the victims.

AIHRC primarily conducted a public

mitted crimes. These four groups include:

1. The Communists,
2. Mujahedin,
3. Taliban,
4. Group led by Gen. Abdul Rashid Dostum

According to this report, the Communist and the Taliban committed the greatest level of criminal acts. They are followed by the Mujahedin who are ranked 3rd in committing crimes. From among these groups, the Communists have fallen, the Taliban are on the run and it is mainly the Mujahedin who are active in Afghan political scene. The Mujahedin however were skeptical about it and in principle they viewed

50. In this regards, refer to Afghanistan Justice Project Report 1998

51. On mass killing by Taliban, refer to the Amnesty International Report

it not as a human rights report, but rather as a political plot that aimed at removing them from the political scene. Upon the establishment of the Parliament, one of the first bills that was endorsed in both chambers of the National Assembly, and also promulgated by the President, was the National Reconciliation Charter. But there are criticisms that the bill alike many other ones has not been discussed transparently. For instance, during the arguments about the bill, a member of Wolesi Jirga Dr. Kabir Ranjbar said that “the bill which is referred back to the parliament is not a bill neither in terms of contents or the forms.”⁵² Shukria Barekzai another member of the Wolesi Jirga also believes that the bill initially was raised as reconciliation plan or charter, but unlike other bills and without passage of the regular legislation process, it was sent to the Mishrano Jirga and the president to be passed as a law.⁵³

The National Reconciliation Charter was a response to the report by the Human Rights Watch as well as to the Transitional Justice Program, by which the Mujahedin more than any other group felt threatened. One of the flaws inherent in the Transitional Justice Process was that it from its very outset polluted with political partisanship and it failed to attract the confidence and sympathy of Afghanistan’s people. Apparently, the National Reconciliation Charter is very simple, and it sounds more like a statement. It is composed by 12 articles and is not very controversial. Its formulators have attempted to reconcile themselves with the international changes, and

its defensive rhetoric is quite evident. Its articles have the tone of a political statement and bears little resemblance to legal articles which could be enforceable. In the first article, the Mujahedin are declared immune against any encroachment, and its subsequent articles struggle to provide a framework for reconciliation and compromise. A member of Wolesi Jirga Sultan Mohammad Awrang said, “as we gave sacrifices during the Jihad and resistance and gained no advantages, once again for keeping our country stable and peaceful and to heal all the wounds and forget the pasts, we, the Mujahedin, once again will be the advance guards of the death and provide stability for the country {by approving the amnesty bill}.”⁵⁴ Another Jihadist member of the Wolesi Jirga Hajji Almas also says “we remember how they dragged out innocent people by names of Mullahs, village elders and khans. Still their bones are found in Poligoon. We remember those events, but we have pardoned them.”⁵⁵

But this manifesto has challenged Transitional Justice Process from a legal point of view. Currently, the Afghan government has considered it as a legal bedrock for its negotiations with the Taliban and Hizb-e Islami. The timeframe for the Transitional Justice Program came to its end last year, but the Afghan government refused to extend it, as it had never attempted to implement any of its articles. The manifesto was primarily drafted and supported by the Mujahedin; however, it is now the government that exploits it more than anybody else. Even a number of those who support-

52. Wolesi Jirga Journal, Volume No. 4, 2nd Year, Hoot 1385

53. Ibid

54. Wolesi Jirga Journal, Volume No. 4, 2nd Year, Hoot 1385

55. Wolesi Jirga Journal, Volume No. 4, 2nd Year, Hoot 1385

ed this manifesto early on, are now against the implementation of this manifesto with regards to Taliban and Hizb-e Islami. The controversy over this manifesto has yet to come to an end. Human rights defenders, victim groups and Afghan civil society are engaged in campaigning against this manifesto and struggle to repeal it.

Despite its simplicity, this chart indicates a complex situation for legislation in this country. Irrespective of the procedural and ceremonial critics that some MPs such as Bashardost made, claiming that the procedure for the formulation and endorsement of a law was not applied to this specific case, the law itself contains articles that forbid the collective prosecution of a group or a tribe that was involved in past crimes. This law also reflects heterogeneous thinking among the political spectrum of the Mujahedin. The statements then made by the MPs reflected ideological postures, as well as the complex situation of the Mujahedin, who lacked a unified view at senior level. For example, Burhanuddin Rabbani claimed that the charter was a reaction against the foreign propaganda “that had targeted the biggest values of a nation”, while Haji Mohammad Mohaqqeq viewed the charter as a framework that could be effective for prospective stability and reconciliation: “National reconciliation should change into law. Whenever anybody comes in tomorrow and, God willing, in whatever stage of defiance of the nation they are, they should come and join and nobody should oppose”⁵⁶.

However, it is often thought that this char-

ter reflects more an ideological dispute than addressing any legal flaws or solving any legal problems. The Mujahedin felt that the technocratic elites returned from the west struggled to marginalize them by employing instruments such as transitional justice, charges of warlordism, etc. A Mujahedin commander Mr. Abdul Rab Rasool Syyaf says “I seriously ask to punish these people. An organization {referring the Afghanistan Independent Human Rights Commission (AIHRC)}, which has neither the right to agitate the disputes nor raising legal cases, have raised false and treasonable allegations. He added that based on these allegations a number of the MPs call some people as criminals; and call others as traitors; they name some; they should say what they want after deliberating on the consequences of the allegations. Yesterday, such people turned away from their religious and Sharia obligations; escaped from the country; went to another place to sell cigarette and sure chickpeas. Today, they have come and call the Mujahedin as criminals.”⁵⁷

Despite the diversity of the views by Mujahedin at the higher levels, the approval of this law demonstrated that irrespective of ethnic and linguistic controversies caused by the structure of the power, the ideological controversies is also one of the chal-

In the passing of the reconciliation law, the Islamists played the principle role. The Secularists were against it, but their opposition did not affect the situation. The most decisive opposition group was represented by the women and intellectuals' faction, that did staunchly stand up, but ultimately failed to achieve success.

56. Wolesi Jirga (Journal of the National Assembly) Vol. 1385

57. Wolesi Jirga Journal, Volume No. 4, 2nd Year, Hoot 1385

lenges that lie ahead of legislative process in Afghanistan. This also implies that the political alignments have to face crosscutting factors. The National Reconciliation Charter did not have ethnic or linguistic substance, nor did it reflect differences of ideas about the political power. It was merely an ideological clash that was related to participation in political power. It was not related at all to differences of ideas about the political power itself. Therefore, the whole of Jihadi groups, from Dostum to Rabbani, and from Sayyaf to Mohaqqueq, united themselves in one single front.

In the passing of this law, the Islamists played the principle role. The Secularists were against it, but their opposition did not affect the situation. The most decisive opposition group was represented by the women and intellectuals' faction, that did staunchly stand up, but ultimately failed to achieve success. A member of the Wolesi Jirga Dr. Ramazan Bashardost, who was against the charter, says "You should study the constitution. Which article of the constitution provides the authority to the parliament to enact such a charter? If the bill was to be passed as a law, the article 97th of the constitution should have been observed. When they say, they have the majority; it is as if someone says that today we agree that the milk is black, because we are the majority. But the milk never gets black. If our work has no legal ground, the next parliaments may annul it, as it happened in Chile.⁵⁸" Ultimately, such struggles by Bashardost and other intellectuals and the women who were against the law failed. The immunity bill, which initially was suggested as a char-

ter, finally was approved as a law. Also the small leftist current also did not deem advantageous to challenge this manifesto.

Needless to say these were not the only controversies and there were several other controversies that instigated strikes and protests in other cases, though not similar in importance but it can't be considered as the result of otherwise than the challenges and complicacies of today's Afghanistan and the political vivacity in its parliament. (See table No 12 for other cases of protests)

9. Conclusion

Afghanistan's Parliament is defined as a modern legislative institution in the Constitution of this country. It is quite vital for the future of Afghanistan that the legislative body itself has adequate legal credentials. Wolesi Jirga (Lower House) is recognized as the most important legislative element in the Constitution. This legal background enables Wolesi Jirga, as a modern legislative body, to legislate in accordance with the free will of the citizens.

Wolesi Jirga as a legislative unit is highly heterogeneous and incoherent, a fact which cannot be considered negative as a whole. However, the political groupings which constitutes it are quite fluid. As observed in the above-mentioned instances, it is possible that the boundaries of these groupings get diluted or, in particular cases, fall apart under the influence of identity, ethnicity and the structure of political power. The inter-parliamentary groupings are a reality,

58. Wolesi Jirga Journal, Volume No. 4, 2nd Year, Hoot 1385

but have yet to attain the solidity they need. However, these groupings do influence the legislative process, though being incapable of imposing their stances (like the serious opposition of women and intellectual faction against the National Reconciliation Manifesto).

It is neither the resolve of the MPs nor the usual political groupings that can genuinely influence the legislative process; rather it is the reality of the political power, ethnicity and language that can exert genuine influence on the legislative process. In comparison to other realities such as ideological and factional segmentation, this reality carries greater influence. This issue unfolds the reality of another social layer in Afghanistan that can not be sidelined in the analysis of the problems of this country, including legislation. This research has attended to both these social realities influencing the social life of contemporary Afghanistan and the Parliament's activities.

The existing political groupings are the intangible realities of society. However, they are not so intangible as not to be reckoned with, or to ignore their influence on society and in particular on the legislative process. There are more serious realities that rank in top tier in terms of influencing the social life including the legislation. In our research, both these types of influences have been explained well.

This research indicates that disputes on power, ethnic, and tribal tendencies, along with low legislative capacity and inadequate knowledge with regards to legislation, have created serious problems for the legislative process. This means that though essential

foundations, and in particular appropriate legal grounds, have been established for legislation in this country, there are no facilities and capabilities to exploit these frameworks and potentials yet.

To overcome these problems, it is essential to improve the capacity and exploit the expertise of the specialists. The nature of the law stems from new legal foundations that are still strange to Afghan mentality. Many examples have been seen which demonstrates the fragility of the idea of rule of law. It is absolutely significant to understand that "National Assembly" which is a new legal concept, stems from the ideas of the citizens and has no connection with the "delegation", which falls under private legal code, and "consultation" which is related to classic political thought. The notion of law deriving from the free will of the citizens is still not firmly established in this country. The incoherent political alignments and the relatively negative political competition, which has often engulfed the Parliament nowadays, as in the examples that were given above, relates to a great extent to incoherent understanding of the nature of law. The representatives of Wolesi Jirga are still called "delegates", a term which shows legal ambiguity. To a great extent, it is also the main feature of transition. There is serious difference of opinion among Wolesi Jirga members that is largely caused by the complex voting pattern in this country.

10. Annexes

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Annex 2: The Latest Reports Published by the Afghanistan Watch

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2. Obligations of Afghanistan under International Criminal Court, October 2009
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